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14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

16
17 STEVEN PRICE, on behalf of himself
and all others similarly situated,

18 Plaintiff,
19 vs.

20 FACEBOOK, INC., a Delaware
corporation, and DOES 1 through 10,
21 inclusive,

22 Defendants.

23 This document also relates to:

24 RootZoo, Inc., individually, and on behalf
of all others similarly situated,

25 Plaintiff,
26 v.

27 FACEBOOK, INC., and DOES 1 through
10, inclusive,

28 Defendants.

Case No. 09-cv-03519-W

Honorable Ronald M. Whyte

**ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED
(Civil Local Rule 3-12)**

Case No. 09-cv-03043-JF

Honorable Jeremy Fogel

This document also relates to:

Unified ECM, Inc., on behalf of itself and all others similarly situated,

Case No. 09-cv-03430-PVT

Honorable Ronald M. Whyte

Plaintiff,

V.

FACEBOOK, INC.,

Defendant.

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 31, 2009, the case entitled *Price v. Facebook, Inc.*, Case No. 09-cv-03519 (the “Price Action”) was filed in the United States District Court for the Northern District of California. Pursuant to Local Civil Rule 3-12, Plaintiff Steven Price (“Plaintiff”) submits this motion for the Court to consider whether the Price Action should be related to the action entitled *RootZoo, Inc. v. Facebook, Inc.*, Case No. 09-cv-03043-JF (the “RootZoo Action”), and the matter for which a previous Notice of Related Case was filed, *Unified ECM, Inc. v. Facebook, Inc.*, Case No. 09-cv-03430 (the “Unified Action”). Plaintiff is informed and believes that an administrative motion to consider whether the Unified Action should be related to the RootZoo Action was filed by the plaintiff in the Unified Action on August 3, 2009, and remains unresolved.

Local Rule 3-12(a) says that an action is related to another when: “(1) The actions concern substantially the same parties, property, transaction or event; and (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” As such, the Price Action is related to the RootZoo and Unified Actions because, while not identical, both concern *substantially* the same parties, property, transactions or events.¹ *To wit:*

1. All Actions are against the same Defendant, Facebook, Inc. (“Facebook”).
2. All Actions are class actions brought on behalf of substantially the same parties – Facebook pay-per-click (“PPC”) advertising customers who were overcharged for PPC advertising.
3. All Actions allege claims against Facebook for breach of contract and the violation

¹ Plaintiff notes that while the allegations made within the Price, Unified and RootZoo Actions all involve “substantially the same parties, property, transaction or event,” making relation and coordination of the Actions appropriate, the Price Action has differences that militate against *consolidation* of the Actions. In particular, the Price Action involves a narrower scope of wrongful conduct by Facebook -- that is, the Price Action seeks to recover for “invalid clicks” (clicks that never even took place) only, while the Unified and Root Zoo Actions also seek to recover for “fraudulent clicks” (clicks that occurred but were caused by the fraudulent activities of third parties). In addition, the Price Action, unlike the Unified and Root Zoo Actions, challenges Facebook’s practice of providing its customers with future use “credits” rather than present cash refunds as reimbursement for invalid clicks. Finally, Plaintiff anticipates amending the complaint in the Price Action to include an additional claim that, like Plaintiff’s existing declaratory judgment claim, is not alleged in the Unified or RootZoo Actions.

of *Business & Professions Code* Section 17200, *et seq.*

4. The Price and Unified Actions also allege claims against Facebook for Unjust Enrichment.

4 5. All Actions allege that Facebook overcharged its PPC advertising customers.

5 6. All Actions allege that Facebook failed to fully and/or adequately refund those
6 advertisers for such improper charges.

7 Pursuant to Local Rule 3-12(b)(2), it appears likely that there will be an unduly
8 burdensome duplication of labor and expense or the possibility of conflicting results if the cases
9 are conducted before different judges as a result of the foregoing. Accordingly, Plaintiff
10 respectfully requests that the Court relate the Price Action to the RootZoo and Unified Actions
11 forthwith.

13 DATED: August 18, 2009

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